

1 feet. I agree with you. But I do think that Quips holders,  
2 and there are a number of them we believe that have held all  
3 along, that are small people who don't have Fried Frank or  
4 don't have their own law firms. I do think that they have to  
5 get a package of material given the constant change in their  
6 treatment and the additional sort of suggestions here that  
7 enable them to understand what has happened and what their  
8 options are. And I'm --

9 THE COURT: Well, I'm going to leave --

10 MS. STEINGART: -- happy to work with the Debtor on  
11 that.

12 THE COURT: -- it like this. I think that obviously  
13 the difference ought to be fully disclosed, if there is one.  
14 The sense I get is that there is not agreement between how you  
15 read the Plan before and now in terms of the treatment, and the  
16 way the Debtor or the Committee or others read it. That it is  
17 not -- so, I mean there may be some difficulty in terms of  
18 making sure that what actually happens is clear -- I think  
19 that's a point that has been well made -- and making sure that  
20 what actually happens is clearly disclosed. Everybody would  
21 agree with that. I'm a little troubled by the fact that what  
22 you see as the difference in treatment, nobody else sees.

23 MS. STEINGART: Well, Your Honor --

24 THE COURT: Or maybe Law Debenture sees, but, I mean,  
25 the Debtor doesn't see, for example.

1 MS. STEINGART: But, I'm happy --

2 MR. AUSTIN: Your Honor, I think the problem that I  
3 believe -- the fundamental issue here is understanding what the  
4 1129(a) says, which is if a class votes to accept that there  
5 may be members of that class that vote "no," but if the class  
6 as a class has voted to accept, 50% in number and  $\frac{2}{3}$  in dollar  
7 amount, the class carries.

8 THE COURT: Right.

9 MR. AUSTIN: Whatever goes to the class, goes to that  
10 class and you get -- effectively what you have in the parlance  
11 is a cram down within the class.

12 THE COURT: But --

13 MR. AUSTIN: And that's --

14 THE COURT: Well, we understand that. But the issue  
15 here is are there separate rights being given to the dissenting  
16 holders in the accepting class under the first Plan that are  
17 not being given to the dissenting holders under the second  
18 Plan?

19 MR. AUSTIN: The answer is no, Your Honor. We'll be  
20 -- we'll address it.

21 MS. STEINGART: Right. We disagree, but we are happy  
22 to work with the Debtors on this. The other (indiscern.) I had  
23 is that I'm not sure that by the end of the day today, many of  
24 the players being in Court and having to attend to these  
25 proceedings, that that language can be produced, embedded and

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

1 discussed I'm thinking. So hopefully, you know, if we had 'til  
2 the end of the day, hopefully tomorrow, we could work together

3 --

4 THE COURT: But there's --

5 MS. STEINGART: -- and have a set of disclosures which  
6 we all can be satisfied with.

7 THE COURT: Well, I'd like to get through this stage  
8 of it so we can get to the evidence, that's what I'm concerned  
9 about. Mr. Kornberg?

10 MR. KORNBERG: Yes, Your Honor, very briefly, two  
11 points. One, we don't agree with the description of the prior  
12 Plan that was just put on the record by Ms. Steinberg. But  
13 again, absolutely the changes that are being made in the  
14 distributional scheme have to be described, and I'm sure we can  
15 do that. It's not that elaborate. The other point I would  
16 make, Your Honor, is that we strongly support the Debtor's  
17 intent to distribute just a summary disclosure statement. We  
18 agree with Your Honor that it's much more effective to give  
19 Creditors merely a description of the changes in the Plan,  
20 rather than the entire restated document, which we don't think  
21 will capture their attention for other reasons Your Honor  
22 noted. So as long as the documents can be readily available on  
23 websites and otherwise, the Committee believes that just  
24 distributing the summary is the most effective way to go here.

25 THE COURT: And that summary will say, "This is what

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

1 the treatment used to be and this is what the treatment is  
2 now."

3 MR. KORNBERG: Yes, Your Honor. And I would just say  
4 I don't think we need to describe other potential plans. We  
5 need to describe, "This is what you were getting under the  
6 original Plan. This is how it's changed. If you want to see  
7 further documentation, we refer you to these resources and you  
8 can get it." And that's what Creditors really need here, and  
9 Your Honor, that's consistent with how this is done in many  
10 other situations.

11 THE COURT: I think it's the right thing to do.

12 MR. KORNBERG: Thank you.

13 THE COURT: I'm fully supportive of that. As long as  
14 they have the opportunity to get the full information, I think  
15 a more bullet-pointed, laser-like description is more likely to  
16 inform a Creditor than sending them three feet of documents.  
17 Yes, Sir, Mr. Snellings.

18 MR. SNELLINGS: Your Honor, just one -- I'm here to a  
19 certain point -- my colleague's here in the Courtroom. We will  
20 work on language as long as we have someone identified to work  
21 with and try to get that done today. With regard to a change  
22 in the Plan, all I would suggest is that you have to look at  
23 the blackline version of the disclosure statement on page 56 in  
24 which the blackline indicates that there's new language with  
25 regard to, "if 8B accepts the Plan that the notes are cancelled

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

1 and the rights of the holders thereof." And then there's new  
2 language including but not limited to, "any claims or positive  
3 action including but not limited to fraudulent transfer claims  
4 against the Debtor." If that was consistent with what was  
5 being offered us under the original Plan and disclosure  
6 statement, there wouldn't be a need for that insertion. But  
7 we'll take that up with you later.

8 THE COURT: All right. We have a lot of capable  
9 counsel in the room. We're proceeding with our hearing. Not  
10 everybody has to listen to the hearing. We have lots of  
11 working rooms right outside there if you all would like to send  
12 representatives to go work on that. There are four separate  
13 rooms right outside there where these matters can be worked on  
14 and take advantage of the breath-taking billing rate we have  
15 going today with this confirmation hearing. I think that would  
16 be a very useful thing to do for us to see if we can reach some  
17 kind of consensus before the end of the day. Ms. Denniston?

18 MS. DENNISTON: Your Honor, one other issue was  
19 raised, and I just want to make sure that the Court has a  
20 record on it, and that was the question of timing on the  
21 solicitation process. We have in the Courtroom today Jonathan  
22 Carson, who is the representative of KCC, the Debtor's claims  
23 and solicitation agent. And in connection with the proposed  
24 solicitation procedures, we asked Kurtzman Carson to develop  
25 the resolicitation timeline on which the deadlines are based.

1 And I would be happy to call Mr. Carson to the stand to affirm  
2 the dates that are set forth in the solicitation package. I  
3 would proffer to the Court that his testimony would be that he  
4 reviewed the solicitation package going out, confirmed with  
5 those that were necessary to get the ballots to the holders and  
6 determined that the timing proposed by the Debtor was  
7 appropriate.

8 THE COURT: Now this is for the new solicitation?

9 MS. DENNISTON: This is for the new solicitation, Your  
10 Honor. Magten and Law Debenture, I believe, raised questions  
11 as to --

12 THE COURT: Let's --

13 MS. DENNISTON: -- whether --

14 THE COURT: -- let's talk specifically about what  
15 those proposals are.

16 MS. DENNISTON: Those proposals are, Your Honor, that  
17 we would establish a record date that would continue to apply  
18 to the ballot of May 26th, that the voting deadline for the  
19 First Amended Plan was actually August 2nd, and then we have  
20 the hearing today. We have done the initial cut based on an  
21 August 27th order, although we have allowed some time there for  
22 an order that could be entered a couple of days later. During  
23 the period of August 22nd to August 30, Kurtzman Carson would  
24 send the resolicitation package, Merrill would print the  
25 resolicitation packages, and a resolicitation package would be

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

1 sent out both to the class 9, which is approximately 201  
2 Creditors, and then the packages to the non-ADP class 7 and 8  
3 record holders. And of the time period between August 31 and  
4 September 3, ADP is in --

5 THE COURT: I'm sorry, when you say non-ADP?

6 MS. DENNISTON: Yeah, ADP is the agent that has to  
7 assemble the -- and send out the resolicitation ballots to a  
8 number of the individual holders. And that would have to be  
9 completed by September the 3rd. That assumes that we have  
10 gotten a notice of a voting deadline of 14 days, which is  
11 what's proposed in the Resolicitation Motion.

12 THE COURT: So by September 3rd, what, precisely, has  
13 happened?

14 MS. DENNISTON: Everybody will have put -- been  
15 received -- be in receipt of or it will be in the mail going to  
16 them, the resolicitation package which would consist of the  
17 summary disclosure statement, the information as to how to  
18 reach the website or call somebody for copies, and the new  
19 ballots.

20 THE COURT: Okay.

21 MS. DENNISTON: And that would -- we have provided for  
22 a 14-day solicitation period. September 8th is the proposed  
23 deadline for serving the continued hearing notice regarding the  
24 continuation of the confirmation hearing on all the parties not  
25 receiving the solicitation package, and that the voting

1 deadline would be established as September 17th. And that  
2 assumes that we have the order entered on a certain date that  
3 they could let drop or move to September 19th, for example, if  
4 the order's entered a couple of days late.

5 THE COURT: So by September 17th, the votes have to be  
6 actually received by the agent, or do they have to be post-  
7 marked or mailed or what?

8 MS. DENNISTON: We have asked that they be received by  
9 the voting agent because the timetable that we have is that the  
10 voting agent has advised us that they will need a 4 or 5-day  
11 period to tabulate and file the resolicitation vote.

12 THE COURT: How many steps do we have? By steps, I  
13 mean how many steps have to take place before the packet is in  
14 the hands of the person who is actually going to make the  
15 decision? Does it have to go to a middleman who then passes it  
16 out to the folks, or does it go directly to the holders, let's  
17 say, of the Quips or the class 9 people or whatever?

18 MS. DENNISTON: The answer to that, Your Honor, is  
19 both. It goes directly to class 9, it goes directly to those  
20 holders in class 7 and 8 that are non-ADP service holders.

21 THE COURT: And if it goes to ADP, what's the  
22 turnaround with the ADP people?

23 MS. DENNISTON: ADP has indicated that their  
24 turnaround -- that they will have the ballots out in the period  
25 of August 31 to September the 3rd.

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191



1 THE COURT: So are you saying it's the same?

2 MS. DENNISTON: It's the same, Your Honor. Kurtzman  
3 will be getting its ballots out under this analysis between  
4 August 30 and 31. ADP will assemble, have the ballots ready to  
5 go, and they'll be mailed out because the number of ballots  
6 between August 31 and September the 3rd would be the last date  
7 under this timeline.

8 THE COURT: Let me ask you this question: what  
9 problems, if any -- if I heard testimony from the agent, what  
10 problems, if any, occurred during the last solicitation in this  
11 case?

12 MS. DENNISTON: Your Honor, based on the information  
13 that was provided to the Debtor, we had no problems during the  
14 initial solicitation period.

15 THE COURT: And what was the solicitation period that  
16 was made available the last time? How long was the --

17 MS. DENNISTON: It was the full 28 days, Your Honor.

18 THE COURT: Do we have any information as to whether  
19 or not there were circumstances when that full 28 days was  
20 necessary?

21 MS. DENNISTON: I would --

22 THE COURT: You know --

23 MS. DENNISTON: -- that --

24 THE COURT: -- we've all had this arise in other  
25 cases.

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

1 MS. DENNISTON: I would have to --

2 THE COURT: Mr. Kornberg was in that case. Weren't  
3 you in that case, Mr. Kornberg?

4 MR. KORNBERG: Probably.

5 (Laughter)

6 THE COURT: No, I mean in the Einstein case. In the  
7 Einstein case, we had precisely the issue where a proponent of  
8 the plan came in and was very heavily involved in making sure  
9 that we had a quick solicitation. And then what happened was  
10 there were three or four key votes that were received after the  
11 voting deadline. This is close enough for government work.

12 (Laughter)

13 THE COURT: So then what happened was -- then there  
14 was a motion that said, you know, let's allow those as really  
15 validly filed claim. We have a whole evidentiary hearing,  
16 which I actually did not do. What happened then was, the plan  
17 wasn't accepted when, in fact, if you counted those others, the  
18 plan would have been accepted. But it seemed to me that was  
19 the fairest level playing field circumstance. That was not an  
20 evidentiary hearing that anybody wanted to have, including me  
21 which is -- and the problem could maybe have been addressed so  
22 long as we had a long enough time. That's why I'm  
23 hypersensitive to this is I don't want to have that situation  
24 again. I don't want to have somebody who, you know, FedEx it  
25 off somewhere and it arrives two days late and it doesn't get

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

1 counted and then we spend a lot of time figuring out whether  
2 that's a valid vote or not. That's why I'm asking these  
3 questions.

4 MS. DENNISTON: Fair enough, Your Honor.

5 THE COURT: So I want to make sure that we're  
6 comfortable that they actually get in the hands of the holders.  
7 And part of the problem there was, you know, the multi-step  
8 process. You had to go here, here, here, here and then finally  
9 somebody gets it and then it has to go here, here, here back,  
10 and medallions and stamps and all that stuff and before you --  
11 the time you, you know, you get to the agent, it's too long.

12 MS. DENNISTON: Well, Your Honor, I would say to this  
13 to that if the Court could tell us what the Court's thinking is  
14 on the continued hearing date, we might be able to avoid this  
15 problem altogether because what we did in terms of setting the  
16 most -- the shortest but the most feasible solicitation period  
17 was to look at when we might have the opportunity for the first  
18 hearing. What I would propose, if there's any information the  
19 Court could give us on that, is that we would extend out that  
20 solicitation period to utilize those times.

21 THE COURT: Well, what is it you were -- what was your  
22 thought basis for when that hearing was going to take place  
23 based -- upon which this schedule was based?

24 MS. DENNISTON: Well, I mean that -- and that's a very  
25 unitary sort of Debtor's preference thought analysis, Your

1 Honor, but we were looking for something on or after September  
2 the 23rd, subject to the Court's calendar.

3 THE COURT: Well, that's not possible. I am not -- I  
4 am gone, out of pocket, from the 23rd through October 1.

5 MS. DENNISTON: That's fine, Your Honor. If the Court  
6 could just indicate what date, then, what I would propose we do  
7 is that we would revise the solicitation procedures to provide  
8 for additional time on the voting, given the Court's calendar.

9 (Pause in proceedings)

10 THE COURT: Well, Rhonda?

11 THE CLERK: Yes, Sir?

12 THE COURT: We have that trial in the MicroAge case on  
13 the 5th of October.

14 THE CLERK: Correct.

15 THE COURT: Which I think is likely to go. We have a  
16 number of hearings set on the 6th of October that I think we  
17 could move to the 8th.

18 THE CLERK: You could move the 6th to the 8th.

19 THE COURT: Yes, and that would then free up a day on  
20 the 6th.

21 THE CLERK: Right.

22 THE COURT: That may be about as good as I can do.

23 MS. DENNISTON: Thank you, Your Honor.

24 THE COURT: October 6th.

25 MS. DENNISTON: Would that be in Phoenix or Wilmington?

1 THE COURT: The -- that would be here.

2 MS. DENNISTON: Thank you, Your Honor. Well, with  
3 that --

4 THE COURT: The weather's nicer in October is what it  
5 is.

6 (Laughter)

7 MS. DENNISTON: With that, Your Honor, I think that we  
8 could comfortably provide a 14 -- or a 21-day, possibly 22 or  
9 23-day solicitation period which would move the voting  
10 deadline, I think, to a comfortable date, certainly for the  
11 Debtor and the voting parties.

12 THE COURT: Well, I think -- the other thing we need  
13 to discuss is assuming that we have -- we continue to have a  
14 contested confirmation hearing, and we get in the evidence  
15 we're hoping to get in today, how much additional time do you  
16 think you'll need? Because what I've done is cleared a day.  
17 I've not cleared 2 days or 3 days or whatever. I've cleared 1  
18 day.

19 MS. DENNISTON: Your Honor, I think we can do it in a  
20 day.

21 THE COURT: Okay. All right. We'll say October 6th,  
22 then.

23 MS. DENNISTON: Thank you, Your Honor. And with that,  
24 we will circulate a proposed -- the revised re-solicitation  
25 package to extend out the voting solicitation period consistent

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

1 with the Court's setting of the hearing on October 6. For the  
2 purpose of completing the notice, would we be beginning at 9  
3 o'clock, Your Honor?

4 THE COURT: Yes, sure.

5 MS. DENNISTON: Thank you.

6 THE COURT: Well, we'll start as early as you would  
7 like. 9 o'clock's probably as early as you would like.

8 MS. DENNISTON: Thank you, Your Honor. With that,  
9 subject to the additional revisions that are being worked on to  
10 the disclosure statement and the revised solicitation  
11 procedures, I think it would be appropriate for the Debtor to  
12 make those revisions, circulate those documents and then file  
13 the proposed order once we have resolved the final objections  
14 subject to the need for this Court to run interference on any  
15 ability to reach agreement about the language.

16 THE COURT: Okay.

17 MR. SHINDERMAN: Excuse me, Your Honor. This is Mark  
18 Shinderman of Manger Tolles & Olsen on behalf of Milbank Tweed.

19 THE COURT: Okay.

20 MR. SHINDERMAN: Additional disclosure statement  
21 objections Ms. Denniston read into the record revision of  
22 Section 10.9 which is acceptable. It also has six specific  
23 questions that we were hoping the disclosure statement has.

24 THE COURT: And those are? Shall we deal with them  
25 right now?

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

132-329-0191

1 MR. SHINDERMAN: In Section 10 of the Plan,  
2 (inaudible) a trust and channeling injunction of how those  
3 provisions worked. For the six questions that ideally we would  
4 like to address, the point is what does the trust and  
5 channeling injunction seek to accomplish? Does it affect what  
6 is commonly referred to as the McGreevey litigation, affect  
7 other Defendants such as Milbank in the McGreevey litigation?  
8 The point is, how does it relate to an MOU which is the subject  
9 of a Settlement Motion, I believe it's scheduled to be heard by  
10 Your Honor on September 15th. The question is how does it  
11 affect insurance policies that are commonly referred to as the  
12 Montana policies (inaudible) policies are. Six, to the extent  
13 that it has an affect on the policies or the litigation --  
14 litigational plaintiffs, (inaudible) for that affect is. Just  
15 reading those provisions, it's hard to understand (inaudible)  
16 accomplish how and why.

17 MS. DENNISTON: Your Honor, I would respond that the  
18 Debtor can work on language and submit that for review. I  
19 think that a number of those questions have already been  
20 addressed, particularly with counsel for Milbank and Goldman,  
21 but we're certainly happy to add a paragraph to the disclosure  
22 statement making clear how those component parts interrelate.

23 MR. SHINDERMAN: And, Your Honor, that would be fine  
24 with us with one caveat. I assume then if we have any further  
25 objections and confirmation issues, those would be addressed at

1 the continued hearing.

2 MS. DENNISTON: That's the Debtor's understanding,  
3 Your Honor.

4 THE COURT: All right, thank you.

5 MS. DENNISTON: Your Honor, that concludes the  
6 Debtor's presentation, at least as to the disclosure statement.

7 THE COURT: All right, thank you.

8 MS. DENNISTON: Would it be appropriate at this point  
9 to take a brief recess so that we can set up for the  
10 confirmation hearing, Your Honor --

11 THE COURT: Sure.

12 MS. DENNISTON: -- which is the next item on the  
13 agenda.

14 THE COURT: All right. We'll take a brief recess.

15 MS. DENNISTON: Thank you.

16 UNIDENTIFIED SPEAKER: For those on the phone, is  
17 there any idea about how long this is going to be?

18 ALL: Brief.

19 (Recess)

20 THE CLERK: All rise.

21 THE COURT: Please be seated. All right, are we ready  
22 to proceed? Mr. Austin?

23 MR. AUSTIN: Yes, we are, Your Honor. We are ready to  
24 proceed with the beginning of the confirmation hearing for  
25 Northwestern Corporation's Second Amended Plan of

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191



1 Reorganization. What we propose to do here, Your Honor, is to  
2 give this Court a brief introduction and highlight the  
3 differences between the First Amended Plan and the Second  
4 Amended Plan and then to go through the process of the  
5 technical compliance with sections 1129(a) to which we have not  
6 received any objections, to advise the Court on what the vote  
7 was, at least with respect to the First Amended Plan, and then  
8 go directly into the questioning of the witnesses and putting  
9 on our evidentiary case as we think we need to put on. In the  
10 interest of time, the Debtor also proposes at this point to  
11 waive any type of opening statement. And this Court is well  
12 aware of what Northwestern is, and we've been here for now  
13 almost a year. And from our perspective, it's time to move on.  
14 We'd like to get started.

15 THE COURT: All right. Please begin.

16 MS. DENNISTON: Thank you, Your Honor. In an effort  
17 to try to expedite matters today and to utilize the Court's  
18 time for the important things which are the witnesses that the  
19 Debtor and others believe that the Court needs to hear from,  
20 but recognizing this is a contested confirmation hearing, the  
21 Debtor filed a request for judicial notice so that we could put  
22 into the record in connection with this confirmation proceeding  
23 certain pleadings and documents filed with the Court during the  
24 course of this case and address issues that may come up. And  
25 rather than go through all of the pleadings, we filed a

1 request. There was no objection to the request for judicial  
2 notice, and we would ask that the Court just enter the so-  
3 ordered order at this time.

4 THE COURT: All right. I'll enter the order.

5 MS. DENNISTON: Okay, thank you, Your Honor. If I  
6 could approach.

7 (The Court receives document)

8 THE COURT: I've signed the order.

9 MS. DENNISTON: Thank you, Your Honor. The next thing  
10 that the Debtor did to try to expedite matters today, because  
11 there have been no challenges to the voting and solicitation in  
12 connection with the Debtor's First Amendment Plan, is that we  
13 filed an offer of proof and outline of evidence in support of  
14 the adequacy of the Debtor's procedures and notice in  
15 conjunction with the debt Debtor's Second Amended and Restated  
16 Plan. This offer of proof also includes the affidavit of the  
17 solicitation agent, as well as the evidence regarding the  
18 publication. And I can walk the Court through a series of  
19 slides at this point that summarizes that, or if the Court  
20 would like, we could also call the solicitation agent to the  
21 stand.

22 THE COURT: Let's walk through that and we'll see if  
23 there's any questions that come out of it.

24 MS. DENNISTON: Okay, with that Your Honor, I'd like  
25 to offer up what the Debtor has marked as an exhibit. This is

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

1 Exhibit #150. This is a copy of the slides that are gonna be  
2 used today and because there was some last minute changes, we  
3 just made a clean copy for the Court. And we also have copies  
4 available depending on how the Court would like this. We've  
5 asked that this document is a copy of all the slides that will  
6 be used. To the extent that documents have been offered into  
7 or will be offered into evidence as exhibits, they'll find  
8 those exhibit numbers on the bottoms of the slides.

9 With that, Your Honor, let's talk just briefly about the  
10 Debtor's compliance with the notice of solicitation procedures.  
11 We just addressed the request for judicial notice and the Court  
12 has now entered that order. We have also filed with the Court  
13 the Declaration of Voting Agent regarding the tabulation of  
14 votes. This is slide #3. Jonathan Carson of Kurtzman, Carson  
15 Consultants is here today and that affidavit is Exhibit-32.  
16 There've been no objections to the offer of proof or any  
17 requests to cross Mr. Carson. This Court entered a bar date on  
18 October 10, 2003. The general bar date was January 15, 2004.  
19 The governmental bar date was April 15, 2004 and the bar date  
20 notice and form B-10 proof of claims was distributed on  
21 November 14th, 2003 by the voting agent. And that's set forth  
22 in the declaration of paragraph 5.

23 Publication of the bar date notice was filed as indicated  
24 in the publications identified on slide #4. The docket entries  
25 reflect the filing of the affidavits of the compliance with

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

1 those notice procedures. On slide #5 we have the following:  
2 the entry of the disclosure statement order, which occurred on  
3 May 26, the record date was May 26, 2004 as set forth in the  
4 Kurtzman declaration at paragraph 8, and the voting deadline  
5 was August 2nd, 2004 at 5 o'clock Pacific time.

6 The solicitation package is consistent with the Court's  
7 order, consistent of the First Amended Plan, and the First  
8 Amended Disclosure Statement. The disclosure statement order,  
9 the confirmation hearing notice, the notice of non-voting  
10 status, the notice to class 7 and 8 note holders who filed  
11 proofs of claim, the ballots for 7, 8, 9 and 12, and the self-  
12 addressed postage paid return envelope.

13 The Debtor has also complied with the publication of  
14 confirmation hearing notice. Again, these are publications  
15 that are identified on slide #7. The docket entries reflect  
16 the filing of the affidavits that the publication did occur.  
17 Those have been offered into evidence with exhibit numbers that  
18 are set forth on the slide. These were included in the  
19 Debtor's request for judicial notice.

20 Balloting and tabulation process. KCC created a voting  
21 database to reflect the names, addresses and classification of  
22 claims in the voting classes for 7, 8, 9 and 12. KCC received  
23 and tabulated the ballots as follows: each ballot was opened  
24 and inspected, the ballots were date stamped, sorted and  
25 scanned, and all ballots received by the voting deadline were

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

1 entered into their system and tabulated in accordance with the  
2 rules set forth in the disclosure statement order. KCC's  
3 declaration of paragraphs 10 and 13 sets out the compliance  
4 with the process just described.

5 The request for solicitation procedures, we have followed  
6 the order as set forth in slide 9. You will see where the  
7 notices were filed and the hearing on the Resolicitation Motion  
8 has occurred this morning. In our request today, we've just  
9 been through those with the Court so I won't bore the Court  
10 going through them again, but in the event that we had had  
11 questions, this was the timeline that the Court just walked  
12 through with us.

13 And with that Your Honor, we would offer the offer of  
14 proof and request the Court's findings at this time that the  
15 Debtor has complied with the notice of solicitation procedures  
16 set forth under the Bankruptcy Code and as required under this  
17 Court's solicitation order as to this First Amendment Plan.

18 (Debtor's Exhibit-150 previously marked for  
19 identification)

20 (Debtor's Exhibit-32 previously marked for identification)

21 THE COURT: Is there anyone who wishes to cross-  
22 examine the voting agent?

23 MR. HOUSTON: Yes, Your Honor, this is Joseph Houston,  
24 for Richard Hylland, and I would like to reserve that before --  
25 until getting a point of clarification. And forgive me, my

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

1 colleague, John Demmy, has been representing Mr. Hylland and I  
2 and was asked just a day or so ago because of his  
3 unavailability to step in. I am informed that Mr. Hylland's  
4 ballot, which voted against the Plan but did not vote with  
5 respect to the relief, was treated as an abstention and I -- in  
6 looking at the report of the voting tabulation, I see that all  
7 ballots cast as class 12 claims, 28 in number, are deemed as  
8 accepting. There is a number zero for rejecting and there is a  
9 number zero for abstained. And before we go into the cross-  
10 examination, and am -- is there a way that we can determine  
11 whether my understanding is correct or incorrect about how Mr.  
12 Hylland's vote was treated?

13 MS. DENNISTON: Your Honor, we would have to call Mr.  
14 Carson to the stand so that he walk through the calculation on  
15 that question.

16 THE COURT: All right, Mr. Carson, are you here?

17 MR. CARSON: (Indiscern.).

18 THE COURT: All right, come forward here, Mr. Carson,  
19 please to be sworn. Do we have a copy of the voting report or  
20 his declaration from Mr. Carson?

21 MS. DENNISTON: Yes we do, Your Honor, and that is  
22 Exhibit Number --

23 MR. HOUSTON: E, I think.

24 MS. DENNISTON: Well, it's Exhibit-D to his affidavit,  
25 but I need the exhibit number, one second.

Carson - Direct

73

1 MR. HOUSTON: Oh, forgive me.

2 MS. DENNISTON: 30 -- 32.

3 THE COURT: All right, Sir, come forward here to the  
4 Courtroom Deputy.

5 JONATHAN CARSON, DEBTOR'S WITNESS, SWORN

6 THE COURT: Please take a seat to my right in the  
7 witness chair. And first, why don't we have Ms. Denniston ask  
8 some questions about the treatment of those particular ballots.  
9 Do you need any -- do you need a document? Do you need your --

10 MS. DENNISTON: Your Honor, I'd like to approach and  
11 hand the witness a copy of the Debtor's Exhibit-#2, which is  
12 the Declaration of the Voting Agent regarding tabulation of the  
13 vote.

14 THE COURT: All right. I'll note that Exhibit-2 is  
15 being handed to the voting agent -- to the witness.

16 MS. DENNISTON: Exhibit-#32, Your Honor, just so  
17 that --

18 THE COURT: 32. And this has specifically to do with  
19 class 12, is that correct?

20 MS. DENNISTON: Yes, Your Honor, I believe the inquiry  
21 from Mr. Hylland's counsel had to do with only class 12.

22 MR. HOUSTON: That's correct, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. DENNISTON:

25 Q. Mr. Carson, can you state your name for the record?

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Carson - Direct

74

1 A. Jonathan Carson, C-A-R-S-O-N.

2 Q. And are you familiar with Debtor's Exhibit-#32, which I've  
3 just handed to you?

4 A. Yes.

5 Q. And is that your signature that appears at the end of the  
6 Exhibit -- at the end of the affidavit?

7 A. It is my name, yes.

8 Q. Okay, and did you assist in the preparation or did you  
9 prepare this affidavit?

10 A. Yes.

11 Q. And have you signed the original?

12 A. Yes.

13 Q. With that, I want to turn specifically to the line of  
14 inquiry in terms of the tabulation of the class 12 votes.  
15 Could you describe for the Court how those votes were tabulated  
16 and walk the Court through the summary of the votes for class  
17 12?

18 A. The votes were tabulated by our office receiving original  
19 ballots, as you had described earlier, date stamping those  
20 ballots, and processing them in our system.

21 Q. With regard to page 14, which shows -- or paragraph 14 of  
22 your affidavit, it shows that that voting tabulation is as  
23 follows -- and I want you to look down at class 12 D&O Trust  
24 Claims -- and can you tell us how Mr. Hylland's ballot was  
25 treated in connection with class 12?

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191



Carson - Direct

75

1 A. Paragraph 14 is a summary of the ballots received and shows  
2 that 28 ballots were received accepting the Plan, whereas zero  
3 received rejecting it.

4 Q. Okay, and have you, in connection with preparation for this  
5 confirmation, you or anyone else at Kurtzman Carson, reviewed  
6 Mr. Hylland's ballots?

7 A. I don't have it in front of me right now.

8 Q. Okay --

9 A. I have reviewed the ballots in preparation for our  
10 confirmation.

11 Q. And what was Mr. Hylland's vote?

12 A. I would need to see the actual ballot to refresh my  
13 recollection.

14 Q. Okay, and do we not have the ballots with us?

15 A. We do. I don't have a copy right in front of me at the  
16 moment.

17 Q. Okay, Your Honor, since the witness doesn't have Mr.  
18 Hylland's ballots, the Debtor did ask for certification of Mr.  
19 Hylland's ballots, I would request that we come back and recall  
20 this witness so that he can have the additional document that  
21 he needs to resolve the question. I'd rather not delay the  
22 Court's time while our associate finds those certifications.

23 THE COURT: All right.

24 MR. HOUSTON: That's certainly agreeable to us, Your  
25 Honor.

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732 329-0191

1 THE COURT: All right, thank you. Then perhaps you  
2 should step down now. And well -- it looks like Debtor's  
3 counsel will be chasing down that issues, Mr. Houston.

4 MR. HOUSTON: Thank you very much, Sir.

5 MS. DENNISTON: Your Honor, when we get the ballots  
6 and have a break we'll resume this testimony and provide the  
7 certification as to specific ballots.

8 THE COURT: All right, well let's remember then also  
9 that -- is there anybody else who has any questions of the  
10 agent?

11 ALL: (No verbal response).

12 THE COURT: Then I will find, other than with respect  
13 to Mr. Hylland's vote, that the presentation will be accepted  
14 and treated as effective for satisfaction of the requirements  
15 for solicitation. We'll hold in abeyance any further findings  
16 with regard to Mr. Hylland's vote.

17 MS. DENNISTON: Thank you, Your Honor.

18 MR. HOUSTON: Thank you, Your Honor.

19 MS. DENNISTON: With that, we're gonna turn to the  
20 Debtor's compliance and to establish the record for this Court  
21 as to those Code requirements for which the Debtors did not  
22 received any objection in connection with 1129, 1122 and 1123.  
23 With regard to the Debtor's compliance, this Debtor filed a  
24 fairly voluminous trial brief in connection with the matters  
25 that are gonna be addressed in the summary fashion. Your

1 Honor, we would ask the Court to take into consideration the  
2 brief and the further explanation, but I wanted to walk the  
3 Court through the Debtor's compliance here.

4 Section 1122, the Plan itself as set forth in Articles 2  
5 and 3, classifies the claims and classes for the claims of  
6 class members are substantially similar. We recognize that a  
7 continued hearing there will be a further discussion on the  
8 claims classification with -- as to class 8. But as to all the  
9 other classes, those classifications are appropriate.

10 As to Section 1123(a)(1), Northwestern has complied with  
11 Title 11, treatment of administrative and priority claims as  
12 set forth in sections 2.1, 2.2 and 2.3 of the First and Second  
13 Amended Plan. As to Section 1123(a)(2), the designation of  
14 unimpaired classes in both First and Second Amended Plan and  
15 Article 4 and the sites set forth on slide 15 and confirmation  
16 brief, Section V-B3B, the Debtor has demonstrated its  
17 compliance. With regard to Section 1123(a)(3) specifies the  
18 treatment of the impaired classes. This is addressed in a  
19 confirmation brief at V-B3 and is set forth, again, in Article  
20 4 of the First and Second Amended Plan. With regard to  
21 1123(a)(4), the same treatment for each claim for interest in  
22 particular class. With regard to all of the classes with  
23 exception of the eight proposed AD class, the Debtor has  
24 complied with 1123(a)(4), and the Debtor is seeking today to  
25 confirm a plan on that basis carving out the issues with Magten

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

1 and Law Debenture in class 8. Section 1123(a)(5), the adequate  
2 means of plan implementation, the Debtor addresses this in the  
3 confirmation brief at V-B3E. As to funding, that's addressed  
4 in Section 5.1, and the Debtor filed on Friday its Motion to  
5 Approve exit financing, which is set for a hearing September  
6 15th.

7 The issuance of the Reorganized Debtor new common stock is  
8 provided for in Section 5.4. The D&O Trust with assets is  
9 addressed in Section 5.1 and Article 6. The disbursements of  
10 cash payments is addressed in Section 5.1. With regard to  
11 Section 1123(a)(5), the adequate means continued, we have  
12 provided for the cancellation of unsecured notes, unsecured  
13 subordinating notes, and all equity interest as set forth in  
14 the First and Second Amended Plans of Sections 4.7, 4.8, 4.13  
15 and 5.5.

16 And for the continued existence of the Debtor, that is set  
17 forth in Sections 5.3, 5.7, and again in Article 9. Section  
18 1123(a)(5), adequate means for implementation continued, the  
19 selection of the officers and directors of the Reorganized  
20 Debtor has been addressed in Sections 9.1 and 9.2, and the  
21 Debtor filed its notice of designation award members for the  
22 Reorganized Debtor on August 10th at Docket 1878 and that's  
23 Exhibit-#4.

24 With regard to the corporate charter prohibition against  
25 issuance of non-voting equity securities, this is addressed in

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

1 Exhibit-A to the Plan and in Section 5.3. With regard to the  
2 selection of the officers, directors and trustees consistent  
3 with the interest to the Creditors and the equity holders,  
4 that's addressed in Section 9.2(a). And again, the designation  
5 of the D&O Trustee and information regarding the salaries for  
6 the directors and officers of the Reorganized Debtors is still  
7 being determined and will be filed prior to the continued  
8 confirmation hearing. With regard to 1129(a)(9), payment of  
9 administrative claims, this is provided for in Sections 2.2,  
10 2.3 and 4.1 of the Plan. With regard to 1129(a)(10), the  
11 acceptance of at least one (indiscern.) non-insider class, this  
12 is provided for in classes 7, 9 and 12. We voted to accept the  
13 Plan and the treatment for 7, 9 and 12 is the same two -- is  
14 the same as that provided in the First Amended Plan or as has  
15 been agreed to by class 7 and 9 in connection with settlement.  
16 And that would be subject to the Debtor's resolicitation.

17 Section 1129(a)(12), the fees to the U.S. Trustee and the  
18 Court are paid or will be paid on the effective date. This is  
19 provided for in Section 5.15 of the First Plan and 5.16 of the  
20 Second Amended Plan. With regard to the continuation of  
21 defined benefit plans, this is provided for in 8.6. The Debtor  
22 has assumed the obligations on all of its qualified Plans and  
23 continues to comply with those Plans throughout this process.  
24 As to the non-qualified Plans, the Debtor is still working with  
25 the various representatives and beneficiaries of those Plans to

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

*132-829-0191*

1 make a determination as to how we will proceed with the non-  
2 qualified Plans.

3 The Debtors remaining burdens, as a result as to what was  
4 demonstrated both in the confirmation brief and what remains  
5 unopposed, have just been set out. Right now, we are looking  
6 at feasibility in terms of establishing that through the record  
7 that will be made today by the Debtor's witnesses. We are also  
8 going to be addressing the valuation question and the  
9 objections filed by the equity of RCG Carpathia and Kellogg and  
10 David Fishel. We will have remaining Plan objections that will  
11 need to be addressed at the continued confirmation hearing.  
12 Those will involve Richard Hylland, Magten Asset Management,  
13 the beneficiaries of the Benefit Restoration Plan, which is one  
14 of the Debtor's non-qualified Plans. There are settlement  
15 discussions underway. The Debtor intends to file a Motion to  
16 Terminate this plan and not reject it as asserted by the  
17 various members. But what we're trying to do is to work out an  
18 acceptable treatment in connection with that Plan. The lead  
19 Plaintiffs and the class claimants in the securities litigation  
20 have filed a protective objection pending Bankruptcy and  
21 District Court approval. We're asking that that objection will  
22 be continued. And PPL Montana and the Debtor have entered into  
23 a stipulation that this Court entered earlier today continuing  
24 their objection regarding the claim reserve, which would be set  
25 for the continued hearing.

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

81

1 With that, Your Honor, we won't go into detail on the  
2 objections that are being continued, but we would like now to  
3 turn to the Debtor's evidence in support of its Plan, and we  
4 call Mr. Austin to the stand.

5 THE COURT: All right, Mr. Austin, come forward please  
6 to be sworn.

7 WILLIAM AUSTIN, DEBTOR'S WITNESS, SWORN

8 THE COURT: Mr. Austin, please take a seat to my right  
9 in the witness chair and speak up clearly into the microphone.

10 MR. AUSTIN: Yes, Your Honor.

11 THE COURT: We have a little more comfortable witness  
12 chair here than we do in Wilmington.

13 MR. AUSTIN: I was about to note that.

14 (Laughter)

15 DIRECT EXAMINATION

16 BY MR. AUSTIN:

17 Q. Good morning, Mr. Austin.

18 A. Good morning.

19 Q. Mr. Austin, just for the record and for the purpose of this  
20 hearing, would you state what your position is with  
21 Northwestern?

22 A. I am the Chief Restructuring Officer for Northwestern  
23 Corporation.

24 Q. And in that capacity, what has been your responsibilities?

25 A. Well, I was hired in April of 2003 with the

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

82

1 responsibilities primarily to, at least at that time, to sell  
2 the non-core assets of the company as designated, to help  
3 formulate a plan, or a restructuring plan, to restructure the  
4 company and to help with the reporting requirements -- the  
5 financial reporting requirements of the company.

6 Q. And when were you first engaged by Northwestern?

7 A. It was in April of 2003.

8 Q. Prior to that, can you give a general background of -- a  
9 broad overview of your employment and your work experience?

10 A. Without going too far back, I was employed at Banker's  
11 Trust Company for almost 18 years. Did a stint to run the  
12 energy business for Banker's Trust Company in Houston, Texas.  
13 Did a short period of time in the leverage buyout business, as  
14 well, for Banker's Trust Company. I then joined McDonald  
15 Douglas Company as a -- initially as the Treasurer of the  
16 company and later as the Chief Financial Officer of the  
17 military business. When that was acquired by Boeing, I joined  
18 a company in Houston, Texas called BMC Software where I was the  
19 Chief Financial Officer. I left BMC Software and joined a  
20 company called Exodus Communication which was a troubled  
21 telecommunications company in California. We entered Chapter  
22 11 bankruptcy procedures with that and sold most of the assets  
23 to Cable and Wireless. I then joined Northwestern Corporation  
24 as the Chief Restructuring Officer again in April of 2003.  
25 Q. And you continue in that capacity today?

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191



Austin - Direct

83

1 A. I do.

2 Q. And just state what is your education? What degrees do you  
3 have as far as your education is concerned?

4 A. I have a BS in Electrical Engineering from Brown University  
5 and I have a Master's Degree from Columbia University in  
6 finance, an MBA.

7 Q. In your connection with your employment at Banker's Trust,  
8 that was in the energy finance area?

9 A. It was.

10 Q. And in your capacity at that employment, did you have  
11 occasions from time to time to do valuations on businesses?

12 A. We did, I did.

13 Q. Now, once you took the position as Chief Restructuring  
14 Officer at Northwestern, what did you do, if anything, to  
15 familiarize yourself with the company and its business?

16 A. Well, initially we clearly went over the plans at the time,  
17 the financial plans, and familiarized myself with the  
18 operations of the company. I spent a fair amount of time  
19 looking at the non-core assets and the values that we might be  
20 able to generate from those non-core assets.

21 Q. And did you familiarize yourself with Creditor's claims  
22 against the company?

23 A. I did.

24 Q. And how would you, again, describe broadly your  
25 responsibilities?

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

84

1 A. At the time, again, I looked at not only the non-core  
2 assets in generating cash from those non-core assets, but I  
3 looked at formulating a plan, a restructuring plan, in order to  
4 restructure the debt obligations of the company at that time.  
5 Clearly it was an over-leveraged situation. We had just filed  
6 -- shortly after I joined, we filed a 10K. That 10K -- in that  
7 10K, we wrote off almost \$880 million worth of assets. And the  
8 company, at that time, had a negative net worth of almost \$500  
9 million.

10 Q. Prior to that write off, was the company showing a positive  
11 net worth?

12 A. Prior to the write off, it was.

13 Q. And so once there was a write off, it then went to a  
14 negative equity value?

15 A. It did.

16 Q. In connection with your responsibilities as Chief  
17 Restructuring Officer, did you have occasion to review the  
18 company's financial projections at that time?

19 A. I did.

20 Q. By that time, I mean the summer -- right after your  
21 engagement in the Summer 2003?

22 A. Yeah. Shortly after I joined, I did review the financial  
23 projections and did look at not only the projections for the  
24 year, but for their 5-year projections at that time.

25 Q. And 5-year projections at that point, is that correct?

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

85

1 A. At that point, that's correct.

2 Q. How would you describe Northwestern's business? What  
3 exactly do you -- would you say Northwestern does?

4 A. Well, Northwestern as it's restructured now is a gas and  
5 electric utility with primarily a service area in South Dakota  
6 and Montana and parts of Wyoming -- of Nebraska, I should say.  
7 Prior to the divestiture of the non-core assets, though, it was  
8 engaged in other activities such as heating, ventilation and  
9 air conditioning businesses, telecommunications through  
10 Expanets. And then just prior to my joining it, it also had  
11 propane distributor ships and propane trading operations.

12 Q. Is -- when you say Northwestern's involved in the gas and  
13 electrical business, is it in the power generation business?

14 A. The company has a small, a very small, portion of the power  
15 generation, primarily held, there's minority interest in the  
16 few power generation plants. But primarily it's a transmission  
17 and distribution company.

18 Q. And what is the distinction between a transmission and  
19 distribution company and a more fully integrated utility?

20 A. Well, for one, in the transmission and distribution  
21 business, you really make money as a tolling operation. You  
22 make money when power, gas or electric power, goes through your  
23 lines and is eventually distributed to the retailers or, in  
24 fact, commercial operations. In a traditional power company,  
25 you might have power plants, you might have -- frankly, you

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

86

1 might have oil and gas interests or other power interests. And  
2 the issue for the company at that time is -- in a traditional  
3 power company you can benefit from increases, if you will, or  
4 decreases in power costs. You know, in a transmission and  
5 distribution company like Northwestern, you don't make money on  
6 the power supply, you just make money on the tolling and the  
7 transportation -- transmission business.

8 Q. Based on your experience, both at Northwestern as well as  
9 your historical experience in the finance area, and also based  
10 on the current market conditions, do have a perspective on  
11 whether there would be a market valuation difference between a  
12 transmission distribution company and a fully integrated energy  
13 company?

14 A. Well, it certainly can be, especially in this time period.  
15 In a transmission and distribution business, you've got a very  
16 easily -- or more easily predictable type of cash flow in  
17 earnings situations so that the multiples that you generate  
18 from a transmission and distribution business are a little more  
19 -- are better understood. You don't get the wide variety of  
20 swings that you get, for instance, in a power company where the  
21 outlook for the power generation business might be wildly  
22 positive or, in fact, might be wildly negative. And you get a  
23 much bigger variation in the multiples that you would put on  
24 the valuation of a traditional power company versus a  
25 transmission and development -- transmission and distribution

*Witter's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

87

1 company, I should say.

2 Q. Okay. Based on your experience and that answer and today's  
3 market conditions, would you anticipate that a transmission  
4 distribution company will trade at a lower or higher multiple  
5 than a more fully integrated energy company?

6 A. Based on today's conditions, it would trade at a lower  
7 multiple because there's not as much upside from the energy  
8 run-up in prices that is presently going on.

9 Q. So let's talk, at this point, and kind of break down in  
10 components your experience at Northwestern. Let's focus on the  
11 chain of events, the developments, say, from your arrival in  
12 April to September 2003 at the filing of the bankruptcy  
13 proceeding. Now I believe you testified that when you --  
14 fairly soon after you arrived, the company filed its 10K and in  
15 connection with that 10K, had a significant restatement of its  
16 financial condition, is that correct?

17 A. That is correct.

18 Q. And that your testimony was that it went from a positive  
19 net worth to a negative net worth?

20 A. That's correct.

21 Q. What was the impact, if any, on the company's business of  
22 the development of the (indiscern.) statement and going to a  
23 negative equity position?

24 A. Well, there was an impact in general at that time because  
25 we had already made an announcement that the company was going

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

88

1 to sell its non-core assets and basically slim down to the key  
2 or core gas and electric utility. So the marketplace at that  
3 time understood that we were going through a financial  
4 restructure. When we made the announcement of the \$880  
5 million, I think that was the exact number, right down it  
6 clearly put more stress on our vendors, our suppliers, in fact,  
7 our employees. But basically what was going on at that time  
8 period was that the liquidity of the company was starting to  
9 deteriorate. It had started early in the year but in the  
10 spring and then later in the summer, vendors that had looked at  
11 our financial situation and had read the press releases and  
12 frankly looked at the condition of the company started to  
13 shorten up on their ability to finance us.

14 Q. And what was -- can you quantify what was the impact on the  
15 liquidity?

16 A. It's a little difficult to quantify from the beginning of  
17 the year until September, but somewhere near 60 to \$70 million  
18 of liquidity at the core utility was deteriorated at that time.  
19 In the meantime, the non-core businesses were also experiencing  
20 their own liquidity runs, both Expanets and Blue Dot had  
21 difficulties with their vendors, and those vendors included  
22 some of our financial participants, mainly the insurance  
23 companies that were doing bid and performance bonds and the  
24 like.

25 Q. And with respect to that liquidity, when you say there was

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

89

1 a 50 or \$60 million negative impact, is that correct?

2 A. Yep, somewhere between 50 and 70.

3 Q. Seventy. Was that actually because you had to -- the  
4 company had to put additional deposits, letters of credits and  
5 the like on energy suppliers?

6 A. Yeah, with the energy suppliers, you know, most of the  
7 contracts that we had were, you know, 30-day payments or 45-day  
8 payments. As soon as the -- it became apparent that the  
9 company was in financial distress, in many cases we had to put  
10 up pre-pays or pay within 3 to 5 days as opposed to giving us  
11 terms. So the liquidity was impacted by those kinds of demands  
12 by our vendors.

13 Q. All right, when you first took this assignment as Chief  
14 Restructuring Officer, and in your early weeks, or say month or  
15 so with the company, was there a perspective at the time that  
16 filing Chapter 11 was inevitable?

17 A. No, it certainly was a possibility when you analyze the  
18 liquidity condition that the company was in. But at that time,  
19 we were trying to put together a Restructuring Plan that  
20 heavily depended on us selling the non-core assets for  
21 significant amounts of money. If, in fact, we were successful  
22 with those sales and there was a Plan, that would have kept us  
23 as an operational company and allow us to not file, frankly,  
24 Chapter 11.

25 Q. When you speak of the non-core assets, I believe you

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

90

1 testified a minute ago that at least the propane business -- is  
2 that Cornerstone?

3 A. Cornerstone Property.

4 Q. The Cornerstone propane business had previously been  
5 divested prior to your arrival, is that correct?

6 A. That is correct.

7 Q. What are the -- identify please the remaining non-core  
8 assets, the focus of your -- of the company's efforts to  
9 dispose of that?

10 A. The primary non-core assets were a company called Expanets,  
11 which is a telecommunications company based in Denver. Blue  
12 Dot, which is HVAC, heating, ventilation and air conditioning  
13 company. We also had an operation in Montana called Montana --  
14 MFM, Montana First Megawatts, which was a power generation  
15 project that was -- we tried to embark upon up in Great Falls,  
16 Montana. We were trying to sell that as a project. We also  
17 had a note from Cornerstone, which was in the amount of about  
18 \$27 million the time that we considered a non-core asset which  
19 was to be divested. And then we also had a relationship or a  
20 contract with PPL for the sale of some coal-strip properties.  
21 And those -- there were five basic non-core assets that we were  
22 trying to liquidate at the time.

23 Q. And was the company successful in liquidating those assets  
24 in the Summer 2003?

25 A. Not by the Summer 2003. In fact, as -- in a case when

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191



Austin - Direct

91

1 you're in financial distress, it always takes longer and you  
2 always get less when you're trying to sell assets under those  
3 kinds of conditions.

4 Q. And the PPL situation was engaged in litigation, correct?

5 A. It was, it still is.

6 Q. It still is. Now, you're initial involvement with the  
7 company -- and you familiarized yourself with the company and  
8 its operations in this business -- did you have a perspective,  
9 say in the June, July timeframe as to what may be the value  
10 that could be recovered by the company's senior unsecured note  
11 holders?

12 A. At the time, we had not put a plan together that was a  
13 liquidation plan, if you will. At that time, we were still  
14 attempting to sell the non-core assets. We had started to  
15 value the firm, and it was clear that when we valued the firm  
16 with the non-core assets and the remaining core utility  
17 business that that value was less than what was the claims on  
18 the company. In other words, it was less than the \$2.3 billion  
19 worth of debt obligations that we had at the time.

20 Q. So, you had at least a perspective that there was no value  
21 to the equity?

22 A. At the time, on a strict liquidation basis with a strict  
23 waterfall basis, there was no value to the equity at that time,  
24 or if it was, it was very de minimis and it would have depended  
25 upon the non-core assets going for significantly greater than

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

92

1 what we thought they could go for at that time.

2 Q. And to be timely received?

3 A. And be timely received.

4 Q. Now, there came a time where ultimately the company  
5 obviously did file Chapter 11 on September 14th, correct?

6 A. That is correct.

7 Q. Can you explain what were the events -- what were the  
8 actions if you can quantify them as to what ultimately lead to  
9 and precipitated the bankruptcy filing?

10 A. Well, before I do that, we ought to talk about -- at the  
11 time we were trying to formulate a plan to keep us out of  
12 bankruptcy, we had a number of things that had to occur for us  
13 to meet our liquidity requirements. One, we were seeking a  
14 financing on our accounts receivable. As I previously stated,  
15 our liquidity was deteriorating during this time period. We  
16 had approached a number of lenders to try to get some financing  
17 on our accounts receivable. The lender that we were working  
18 with most closely was GE. We were also trying to sell the non-  
19 core assets for cash and with those proceeds --

20 (Telephone interruption)

21 THE COURT: Hello, you're breaking into a conference  
22 call.

23 OPERATOR: Oh, just a moment.

24 THE COURT: And this -- we're in the middle of a Court  
25 proceeding so we need to have silence on the other end of the

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

93

1 line. All right, thank you.

2 A. At the time, we were trying to generate liquidity because  
3 we did have a number of obligations that were coming up that  
4 needed to be paid in the September timeframe. We also had a  
5 number of obligations that needed to be paid in the June  
6 timeframe, including our real estate taxes in Montana, coal  
7 strip for the lease payments, and we had a number of  
8 obligations that were going drain our liquidity. So while we  
9 were looking at the non-core assets, we were looking at  
10 financing of accounts receivable, we were also looking at a way  
11 to do debt for equity swaps at that period. One of the issues  
12 that we had in virtually all of the efforts that we undertook  
13 to get those liquidity requirements, namely the financing with  
14 GE, the sale of the non-core assets and later, the amending of  
15 the charter of the company all failed during the summer of  
16 2003.

17 Q. And while this liquidity price was materializing, did the  
18 company take any efforts -- undertake any action to preserve  
19 liquidity?

20 A. Clearly at the time we were trying to watch every dollar  
21 that was being spent, both from a capital expenditure  
22 standpoint and we even went to the extent that we had real  
23 estate taxes to pay to Montana in the June period of 2003, and  
24 we took the opportunity to extend those payments and incur  
25 finance charges by not completely paying the real estate taxes

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

94

1 to the State of Montana. And that was a fairly precipitous  
2 type of an approach because it clearly would offend some of the  
3 -- our constituencies in Montana as we extended the terms of  
4 those agreements.

5 Q. All right, was any other efforts undertaken to preserve  
6 liquidity, such as failure to make payments on certain debt  
7 obligations?

8 A. We did forestall -- or actually we cancelled our payments  
9 under the Toppers. We were allowed to do that and roll that  
10 forward so we stopped that, I believe, in May of 2003.

11 Q. And what about Quips?

12 A. When I refer to the Toppers, I refer to all the  
13 subordinating debt. We cancelled payments on all subordinating  
14 debt.

15 Q. And what about payments on the senior unsecured notes? Was  
16 there any payment due to them during the summer of 2003?

17 A. The payment and -- the precipitating payment was due on  
18 September 15th, 2003. It was approximately a \$30 million  
19 payment. And basically, all of our liquidity and all of our  
20 efforts was to -- were to get liquidity so we could meet that  
21 payment on September 15th. When, in fact, none of our -- none  
22 of our efforts proved to be fruitful, we couldn't make the  
23 payment on September 15th.

24 Q. So during the summer, efforts were being taken then to --  
25 just kind of summarized for the moment -- efforts were being

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

95

1 taken to try and do an out of Court restructure for  
2 Northwestern?

3 A. Absolutely.

4 Q. And in connection with that, the company was attempting to  
5 expedite disposition of the non-core assets?

6 A. Right.

7 Q. It was attempting to obtain an asset receivable  
8 securitization facility from a number of lenders such as GE?

9 A. That's correct.

10 Q. And it had preserved -- attempted to preserve equity -- I  
11 mean liquidity by delaying its property tax payment as well as  
12 extending payments on the subordinating debt?

13 A. We did. And in fact, we had one other issue that was  
14 facing us in that September timeframe and that is we had a  
15 pension payment that we had to pay prior to September 15th --  
16 or it was in our best interest to pay it prior to September  
17 15th.

18 Q. Now, were efforts also underway during this time to try and  
19 get the company's common stock shareholders to approve a  
20 charter amendment to allow for the disposition of additional  
21 stock as well as --

22 A. Yeah.

23 Q. -- debt for equity?

24 A. As part of the plan that we were putting together, it  
25 required, again, not only to sell non-core assets for a

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

96

1 substantial amount of money, but it also required that we'd  
2 have to do debt for equity swaps with the -- with our  
3 shareholders and with our debt holders. We did undertake an  
4 amendment to the charter of the company where upon we asked  
5 for, I believe it was an extra \$200 million shares to  
6 facilitate debt for equity swaps. That vote was opposed to the  
7 shareholders and was defeated, I think it was around April --  
8 I'm sorry, August the 15th of 2003. So we did not get the  
9 approval to do debt for equity swaps.

10 Q. So at that point, you also didn't get your shareholders  
11 support to do an out-of-Court transaction, is that correct?

12 A. That's was the final straw for us in terms of doing an out-  
13 of-Court restructuring.

14 Q. So then, what then actually became the events that lead to  
15 the bankruptcy filing on September 14th, with the conclusion  
16 that --

17 A. Well --

18 Q. -- we have no choice but to file?

19 A. It was a fairly simple calculation. Our liquidity was  
20 deteriorating, we faced a \$30 million payment on September  
21 15th, we faced a \$10.6 million payment on our pension funds.  
22 We had additional real estate taxes that were due and payable,  
23 not only to catch up for what we had not paid on June the 30th,  
24 but we were gonna have another payment on -- sometime in  
25 November, I believe -- or December. So that fact of the matter

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329 0191

Austin - Direct

97

1 is we simply were running out of cash, and in order to preserve  
2 the estate, we decided not to make the payment on September  
3 15th and in fact, to file Chapter 11 on September 14th.

4 Q. Now, let's talk about the Chapter 11 filing and the first  
5 few months of the Chapter 11 proceedings, say up to about  
6 December. The company has filed. Did the company have any  
7 stated or developed goals that it wanted to accomplish now that  
8 it had chosen to -- or had to actually to get into Chapter 11?

9 A. Well, I would add -- just before we filed on September the  
10 14th, we did execute an agreement to sell one of the non-core  
11 assets. So that was one issue that was very important and to  
12 start the process as a stalking horse, non-core asset sale.  
13 But as we entered Chapter 11, it was clear that we had to  
14 stabilize the operation and to stabilize the operation,  
15 including dealing with our vendors, our employees, our  
16 regulators and our debt holders. So the first thing was to do  
17 was to focus on getting the information out and stabilizing the  
18 relationships that we had with all our constituencies. The  
19 second was to focus on the sale of the non-core assets, which  
20 as I said, just prior to going in, we did sell or entered into  
21 an agreement to sell one of the non-core assets. The third  
22 issue was to develop a plan that would enable us to emerge as a  
23 credit worthy operation, which we did. And the forth issue was  
24 to basically put together our own financial plan that was a  
25 disciplined and thoughtful financial plan that we could operate

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

98

1 under.

2 Q. Was there any focus on rebuilding liquidity for the  
3 company?

4 A. We always focused on cash. We did enter into a DIP loan,  
5 which gave us some liquidity. It was a hundred million dollar  
6 DIP loan that the initial entry to Chapter 11. But we focused  
7 on our 13-week forecast, we focused on cash, and tried to build  
8 up liquidity, as I say, through the sale of the non-core  
9 assets; put the focus on our cash from operations.

10 Q. What was the effort, at that point, relative to the payment  
11 on debt, especially as it related to your unsecured senior note  
12 and subordinated debt?

13 A. We always planned -- we planned as we entered into Chapter  
14 11 to pay our secured note holders on a current basis. We had  
15 -- we looked at our financial plan and felt we could pay those  
16 on a current basis rather than deferring that to the end of a  
17 Chapter 11 process. Then our second plan was that as we looked  
18 at the unsecured and the subordinated debt holders, in order  
19 for us to emerge as an investment grade, or near investment  
20 grade company, we would have to convert all of that into  
21 equity. And we did approach the -- initially the Ad Hoc  
22 Committee and then later the Creditors' Committee with that as  
23 our initial focus.

24 Q. To divert all the unsecured public debt into equity?

25 A. To convert all the unsecured public debt into equity.

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191



Austin - Direct

99

1 Q. Now, converting that debt into equity at that point in the  
2 early stages of the case, did you have a preconceived notion  
3 of how that -- the equity in the new company would then be  
4 divided?

5 A. No, we did not.

6 Q. So, there was just a general concept that you were going to  
7 develop -- excuse me, were going to convert the debt to equity  
8 and would let it figure out, once we get an evaluation done,  
9 how it would be divided?

10 A. The issue is -- our effort was to create the most value for  
11 the estate that we could. Our effort was not directed towards  
12 who would get that equity at the end of the day.

13 Q. And where was the company at this point on its relationship  
14 with its regulators, especially the state regulators?

15 A. Well, as I said before, we had certainly scared the  
16 regulators, and I would say the relationship was one of  
17 distrust of -- on the part of the regulators as to here we were  
18 a company that had recently purchased -- distrust mostly on the  
19 Montana side -- we were a company that as early as 2 years  
20 before had bought the company out of a difficult situation in  
21 Montana, and here we were filing for Chapter 11. It clearly  
22 upset the regulators in Montana. And frankly, that's  
23 understandable.

24 Q. And so, one of the -- one of the ultimate goals of the  
25 proceedings is to try to rebuild that relationship?

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

732-329-0191

Austin - Direct

100

1 A. Well, as I said, we had to deal with all of our  
2 constituencies including the employee vendors and regulators,  
3 and we embarked upon a process where upon we tried to inform  
4 the regulators and have an open book view as to how we were  
5 going to operate the company in Chapter 11 and how we were  
6 planning to come out of Chapter 11 in a very short time period.  
7 In effect, we tried to convince the regulators that at, during  
8 and after this process that we would protect their interest  
9 (inaudible) a viable company.

10 Q. Was there an effort to then focus on (inaudible) quickly?  
11 (Telephone line interruption)

12 A. I think you're gonna have to repeat that one.

13 THE COURT: Hello, this Judge Case in Phoenix.  
14 Whoever is placing calls while on this line needs to terminate  
15 the call.

16 UNIDENTIFIED SPEAKER: I'm not commencing any calls.

17 THE COURT: Well --

18 UNIDENTIFIED SPEAKER: I'll terminate the call though,  
19 Your Honor.

20 THE COURT: You're answering a phone and it's  
21 disrupting the proceedings, so please don't do it.

22 UNIDENTIFIED SPEAKER: Thank you. I didn't realize  
23 you were on the line, thanks.

24 BY MR. AUSTIN:

25 Q. Let me just --

*Writer's Cramp, Inc.*

*Certified Court Transcribers*

*732-329-0191*